SUPREME COURT OF THE UNITED STATES.

No. 378.

LEARNED LYNDE, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Commonwealth of Massachusetts, plaintiff, and Learned Lynde, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Learned Lynde, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

JOHN G. STETSON,
Clerk pro tem. of the Circuit Court of the United States, Mass. Dist.

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

2 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

I hereby certify that an attested copy of a writ of error issued from the Supreme Court of the United States was filed in the cause of the Commonwealth of Massachusetts, by indictment, *vs.* Learned

Lynde, on this fourth day of August, A. D. 1866, at ten o'clock in the forenoon.

[L. S.] JNO. JAS. SAWYER,
Ass't Clerk of the Courts for the County of Middlesex.

Filed August 4, 1866.

3 The United States of America to the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein Learned Lynde is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Clifford, justice of the Supreme Court of the United States, this third day of August, in the year of our Lord one thousand eight hundred and sixty-six.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

4 U. S. OF AMERICA, *Mass. District, ss:*

SEPTEMBER 28TH, 1866.

I this day gave in hand to the attorney general of the State of Massachusetts a true and by me attested copy of this citation.

S. W. RICHARDSON,
Deputy U. S. Marshal.

Service	$2 00
Travel	12
Copy	1 00
	3 12

5 Know all men by these presents, that we, William Lynde, 2d, and William of Lynde, both of Melrose, in the Commonwealth of Massachusetts, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of five hundred dollars, to be paid to the said Commonwealth of Massachusetts, its certain attorney, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this third day of August, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas lately at a superior court of the Commonwealth of Massachusetts, in a suit depending in said court between the Commonwealth

of Massachusetts, plaintiff, and Leonard Lynde, defendant, judgment was rendered against the said Leonard Lynde, and the said Leonard Lynde having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such that if the said Leonard Lynde shall prosecute his said suit to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void; else to remain in full force and virtue.

[L. S.] WILLIAM LYNDE.
[L. S.] W. O. LYNDE.

Signed, sealed, and delivered in presence of—
JOHN G. STETSON.

Approved: NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is to be obtained from the clerk's office of the superior court by the marshal and substituted in place of this on the files in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk pro tem. U. S. C. C., Mass. Dist.

6 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, to wit:*

At the superior court, begun and holden at Concord, within and for the county of Middlesex, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-six.

The jurors for the Commonwealth of Massachusetts on their oath present that Learned Lynde, late resident of Melrose, in the county of Middlesex and Commonwealth aforesaid, at said Melrose, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-six, and at said Melrose from said last-mentioned day to the day of finding this indictment, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, was then and there a common seller of intoxicating liquors, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that Learned Lynde, late resident of Melrose, in the county of Middlesex and Commonwealth aforesaid, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at said Melrose, without then and there having any license, appointment, or authority therefor first duly had and obtained accord-

ing to law, did then and there sell to a certain person, whose name is George B. Brown, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

7 And the jurors aforesaid, on their oath aforesaid, do further present that Learned Lynde, late resident of Melrose, in the county of Middlesex aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-six, at said Melrose, without then and there having any license, appointment, or authority therefor first duly had and obtained according to law, did then and there sell to a certain person, whose name is Otis H. Shackford, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that Learned Lynde, late resident of Melrose, in the county of Middlesex aforesaid, on the first day of April, in the year of our Lord one thousand eight hundred and sixty-six, at said Melrose, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, did then and there sell to a certain person, whose name is to said jurors unknown, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

A true bill.

HENRY C. ROLFE,
Foreman of the Grand Jury.
I. S. MORSE,
District Attorney.

8 COMMONWEALTH
v.
LEARNED LYNDE.

Superior court, June t., 1866.

6th d. Returned by the grand jury and filed in court.

JNO. JAS. SAWYER,
Ass't Clerk.

July 12, 1866. Dfdt. is arraigned, and pleads not guilty.

July 24. 2d jury is empannelled, to wit:

Lorenzo G. Howe, foreman, Charles S. Homer, Richard R. Horr, Isaac Hyde, Stephen C. Kendall, Stephen W. Longley, William H. Moore, George N. Osgood, Samuel H. Robbins, Leonard A. Saville, John W. Spooner, Charles T. Walcott.

July 24. Verd., guilty.

July 12, 1866. Dfdt. as prin. and William O. Lynde, of Melrose, as su., recog. in $300.

July 24. Sentence.—To pay a fine of fifty dollars and cost of prosecution, and to stand committed until such fine and costs are

paid; and to be imprisoned at hard labor in the house of correction in said county for the term of four months, and to recognize in the sum of one thousand dollars not within one year from the time of conviction upon this indictment to violate any provision of chapter eighty-six of the general statutes, or any law of this Commonwealth relating to the sale of spirituous and intoxicating liquors, and to stand committed until he enter into such recognizance.

M. MORTON,
Justice of the Superior Court.

9 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

Superior court, criminal session, June term, 1866.

COMMONWEALTH OF MASSACHUSETTS
vs.
LEARNED LYNDE.

And the defendant comes and defends the wrong and injury when, &c., where, &c., and says that the said Commonwealth ought to be barred from having and maintaining their said indictment in this case, because he says that he had at the time and times mentioned in said indictment, and at all other times, he had full, complete, and perfect authority and license from the United States of America to do all the acts complained of in said indictment, which license was granted him under and by virtue of an act of Congress, and for which he paid, according to the laws of the United States, into the treasury of the United States the full sum of twenty-five dollars; and that he has actually paid in money a tariff or revenue duty and tax upon the same spirituous and intoxicating liquors to the government of the United States, for the keeping and selling of which he is complained of in said indictment, which duty, tariff, or tax was paid upon the said spirituous or intoxicating liquors in the same packages, and in the same form and quantity in which he sold the same, as charged in said indictment, and in no other form, or package, or quantity, and that he has done no other act, or sold any other spirituous or intoxicating liquors than such as he has paid a duty or tax upon to the government of the United States as aforesaid. All of which he is ready to verify.

And for further plea in his behalf the said defendant says that the Commonwealth ought to be barred from having and maintaining their said indictment in this case, because he says that by the Constitution of the United States, and also by the constitution of this Commonwealth, it is provided that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; and that the acts of the legislature upon which the indictment is founded imposes a fine and punishment for an act which is not wrong in itself, and which fine and punishment is excessive, cruel, and unusual, and the said act of the legislature is unconstitutional and void. All of which he is ready to verify.

Wherefore he prays that the said Commonwealth from having and

maintaining their said indictment in this case may be barred, and that he may have judgment, and be hence discharged, &c.

By his attorney,

N. RICHARDSON.

Filed July 16, 1866.

Demurrer to plea in bar.

10 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

Superior court for the transaction of criminal business.—June term, 1866.

COMMONWEALTH, by indictment, *vs.* LEONARD LYNDE. } No. 740.

And now comes Isaac S. Morse, as he is district attorney for the northern district, and says that the Commonwealth aforesaid ought not to barred from having and maintaining the said indictment against the said Leonard Lynde, defendant, as aforesaid, by reason of anything in the plea of said defendant alleged; because he says that the said plea and the matters therein contained are not sufficient in law to bar the Commonwealth from further prosecuting the said indictment against the said defendant. And the said district attorney, among other causes of demurrer, assigns the following, to wit, that said plea is double, argumentative, and otherwise informal and insufficient; all of which the said district attorney is ready to verify.

Wherefore, for want of sufficient plea in this behalf, the said district attorney prays for judgment for the Commonwealth, and that the said defendant may plead over to the said indictment.

I. S. MORSE,
District Attorney.

And the defendant joins in demurrer.

By his attorney, N. RICHARDSON.

Demurrer filed July 16, 1866, and sustained.

11 [L. S.] COMMONWEALTH OF MASSACHUSETTS, *Middlesex, to wit:*

To the sheriff of our county of Middlesex, his deputies, and the keeper of the house of correction in our county of Middlesex, greeting:

Whereas, by the consideration of our superior court, begun and holden at Concord, within and for the county of Middlesex, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-six, Learned Lynde, of Melrose, in said county, now in custody of the sheriff of our said county of Middlesex, convict of the crime of selling liquor on the eighteenth day of the session of the same court, being the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-six, was sentenced by our said court to pay a fine of fifty dollars to the use of said Com-

monwealth, and the costs of his prosecution, taxed at eighty-eight dollars and sixty-one cents, and stand committed until this sentence be complied with, and to be confined to hard labor in and within the precincts of said house of correction for the term of four months, and to recognize to the Commonwealth in the sum of one thousand dollars that he will not within one year from the date of conviction violate any provision of the eighty-sixth chapter of the General Statutes, or any other law of the Commonwealth, relating to the manufacture and sale of intoxicating liquors, and to stand committed until he enters into such recognizance; which recognizance the said Learned Lynde then entered into, and to stand committed according to said sentence.

We, therefore, command you, the said sheriff and deputies, to remove the said Learned Lynde to said house of correction, and we command you, the keeper of said house of correction, to receive the said Learned Lynde, and the same Learned Lynde to imprison and employ in and within the precincts of said house of correction for and during the term of four months, and until he shall pay said fine and costs, or be otherwise discharged by due process of law.

And for so doing this shall be your warrant. And you are to make return of this warrant, with your doings therein, to the office of the clerk of our said court in Cambridge as soon as may be.

Witness Charles Allen, esq., at Cambridge, this twenty-fourth day of July, in the year of our Lord eighteen hundred and sixty-six.

JNO. JAS. SAWYER, *Ass't Clerk.*

MIDDLESEX, *ss:*

JULY 24TH, 1866.

Pursuant to this warrant I have removed the within-named Leonard Lynde to the said house of correction, and delivered him and a copy of this warrant to the keeper thereof.

HORACE COLLAMORE,
Deputy Sheriff.

Fees:

Copy	$0 25
Car fare	65
My car fare	1 30
	2 20

Defendant's exceptions.

12 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

Superior court, criminal session.—June term, 1866.

COMMONWEALTH OF MASSACHUSETTS
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LEARNED LYNDE.

This was an indictment against the defendant under chapter 86 of

the General Statutes, and, together with the subsequent pleadings, may be referred to, and are made a part of these exceptions.

The court sustained the demurrer, and overruled the defendant's special plea in bar. And thereupon the plea of not guilty being entered, the jury found the defendant guilty.

The defendant excepted to the foregoing opinions, rulings, directions, and judgments of the court, and prays that his exceptions may be allowed.

By his attorneys:

JOHN J. HOLMES.
R. S. SPOFFORD.

The above being found conformable to the truth is allowed.

MARCUS MORTON,
Judge of Superior Court.

Filed Aug. 2d, 1866, as of July 24, 1866.

13 COMMONWEALTH OF MASSACHUSETTS:

Supreme judicial court for the Commonwealth, at Boston.—January term, 1866.

In the case of Commonwealth *vs.* Learned Lynde, pending in the superior court for the county of Middlesex, ordered that the clerk of said court in said county make the following entry, under said case in the docket of said court, viz:

Exceptions overruled, the same question having before been decided by this court.

By the court:

GEO. C. WILDE, *Clerk.*

Nov. 26, 1866.

14 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

OFFICE OF THE CLERK OF THE COURTS FOR SAID COUNTY,
December 5th, 1866.

In testimony that the foregoing are true copies of papers filed and of record in the case of the Commonwealth of Massachusetts *vs.* Learned Lynde, I hereto set my hand and affix the seal of said superior court the day and year above mentioned.

[SEAL.] JNO. JAS. SAWYER, *Ass't Clerk.*